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April 2, 2003
TN REGULATORY AUTHORITY
DOCKET ROOM

Hon. Ron Jones, Director
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Generic Docket Addressing Rural Universal Service*
Docket No. 00-00523

Dear Director Jones:

As you know, BellSouth has been engaged in negotiations with the Coalition of Rural Independent Companies ("ICOs") to address issues relating to the primary carrier plan in the context of our competitive market in Tennessee as well as other issues, including the creation of compensation arrangements between the ICOs and CMRS providers for termination of traffic originated on their networks. We are continuing to talk, and we hope to be able to report progress to the TRA.

A particular issue has arisen and has been discussed with ICOs of which we wish to make you aware. As you may know, the ICOs and the CMRS providers have not entered into interconnection agreements regarding termination of traffic to each company's end users. In the absence of such arrangements, these parties have looked to BellSouth to act as the "bank", to manage the passing of compensation between those parties, for terminating such traffic. This traffic merely transits BellSouth's network – but originates and terminates on the CMRS or ICO networks. BellSouth has acted as the "banker" in the past, because BellSouth was unable to distinguish CMRS traffic from BellSouth's own originated traffic due to the systems BellSouth used for billing CMRS providers. As the telecommunications market has changed, including the development of more wireless traffic in Tennessee, CMRS providers have requested that BellSouth enter into meet point billing arrangements that enable CMRS providers to receive industry standard call detail records, enabling them to bill originating and terminating access to interexchange carriers (IXCs), and reciprocal compensation to other local providers. BellSouth already had meet point billing arrangements with CLECs, ICOs and IXCs, and as a matter of parity, CMRS providers were entitled to

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enter into similar arrangements. Thus, BellSouth has moved to meet point billing arrangements with most of the larger CMRS providers. Notwithstanding these developments and changes in Tennessee, and despite notice from BellSouth, the ICOs and the CMRS providers have not made any arrangements for addressing termination of one another's traffic.

This issue has been raised in our discussions with the ICOs. Specifically, we have responded by letter to a query from the ICOs' attorney, which sets out BellSouth's position. A copy of our letter dated April 2, 2003, is attached.

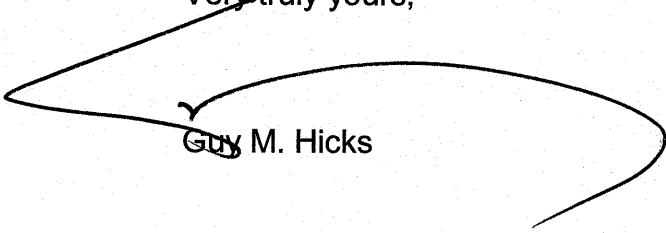
As noted in BellSouth's letter to the ICOs' counsel, we have discussed the issue of terminating CMRS traffic with the ICOs several times in the context of our ongoing discussions, including a letter to the ICOs dated January 16, 2003. A copy of that letter is also attached. That letter details our understanding of the payment to the ICOs for terminating CMRS traffic, particularly the obligations on CMRS providers and ICOs to compensate one another for the termination of traffic under the Telecommunications Act, and the untenable position in which BellSouth finds itself – namely BellSouth funding the termination of this CMRS traffic, with no assurance of BellSouth being reimbursed by the CMRS carrier. In that January letter, BellSouth explained that the CMRS providers and ICOs needed to resolve that issue and that BellSouth could not continue to fund those payments without assurance of reimbursement from the CMRS providers. BellSouth made a significant concession, however, in order to keep our discussions moving in a productive way. BellSouth agreed to continue making those payments through February 2003 settlements (payments to be made in April as the settlements process is two months in arrears), in order to provide the ICOs and CMRS providers with ample time to find a workable solution.

Now, with the deadline drawing near, we have reiterated our position to the ICOs, but at the same time, are in discussions with the ICOs as to the best way to bring this matter before the TRA. We have proposed, and the ICOs are considering, a Joint Petition whereby both BellSouth and the ICOs request that the TRA join all CMRS providers as parties to a proceeding in order to bring the right parties to the table to address these issues. A similar issue was raised in North Carolina and the North Carolina Utility Commission has entered an Order pursuant to which BellSouth will present the CMRS providers with a bill, prepared by the ICO, for compensation for the termination of the CMRS provider's traffic. BellSouth will then remit to the ICO any payment received from the CMRS providers on such bill. For your information, a copy of the North Carolina Order is attached.

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BellSouth is continuing to work with the ICOs to find a way to move forward to ensure that the ICOs have the necessary agreements in place to square their business needs with today's Tennessee market. A copy of this letter has been provided to counsel for the ICOs.

Very truly yours,



Guy M. Hicks

GMH:ch

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April 2, 2003

Steve Kraskin, Esquire
Kraskin, Lesse & Cosson, LLP
2120 L. Street, NW, Suite 520
Washington, DC 20037

Dear Steve:

Thanks for your message on March 18 regarding the status of the ongoing discussions in Tennessee. You are correct that positive, productive discussions are ongoing in Tennessee relating to the primary carrier plan issues, such as adjusting access rates with offsetting rate increases and fund distributions. We are hopeful that these discussions will continue and will ultimately result in resolution for all parties.

With respect to the particular issue of compensation for termination of CMRS traffic to ICO end users, as you know, on January 16, 2003, BellSouth sent a letter to the independent companies ("ICOs") in Tennessee to explain that BellSouth would not continue funding payments to the ICOs for CMRS traffic transiting BellSouth's network, and that it would cease making such payments in May. Specifically, we stated:

Due to concerns raised by the ICOs that they have not begun collecting compensation for the transit Wireless traffic from the originating Wireless carrier, BST, without obligating itself to do so and reserving its rights to terminate such payments, as a show of good faith, will continue to compensation [sic] the ICOs for transit Wireless toll traffic through the April 2003 settlements (i.e., February 2003 transit Wireless toll usage. Settlement for transit Wireless usage is two months in arrears). During that time, we will work with the ICOs to reach an acceptable on-going solution regarding this issue. In the interim, each ICO should be making good-faith efforts to finalize their own agreements with the Wireless carriers.

Date: January 16, 2003

To: Tennessee Independent Telephone Companies

This letter is to provide additional information regarding Meet Point Billing (MPB) with Wireless carriers and our plans to continue compensation.

Once a Wireless carrier converts to MPB, BellSouth Telecommunications (BST) begins creating EMI 11-01-01 access call detail records for the usage of the wireless carrier that transits the BST network and is terminated by your network. BST then forwards these billing records to you so that you may initiate billing to the Wireless carrier. BST is unable to create the EMI 11-01-01 records until the Wireless carrier converts to MPB, and because of this, BST has historically compensated the Independent Companies (ICOs) for transit terminating Wireless toll traffic. This compensation policy was also contingent on the ability of BST to recover these payments to the ICOs from the originating Wireless carriers. BST has provided information regarding this issue to you and/or your billing vendor since June 2000.

As you are also aware, our interpretation of the Telecommunications Act of 1996 is that local interconnection and associated compensation is the responsibility of the originating and terminating parties for both direct and indirect (transit) traffic. Notwithstanding that obligation, BST has continued to compensate the ICOs for transit toll Wireless traffic until the Wireless carrier elected to migrate to a meet point billing arrangement and BST had the ability to provide the EMI 11-01-01 call detail records to the ICO which should enhance the ICO's ability to directly bill the originating Wireless carrier.

Due to concerns raised by the ICOs that they have not begun collecting compensation for the transit Wireless traffic from the originating Wireless carriers, BST, without obligating itself to do so and reserving its rights to terminate such payments, as a show of good faith, will continue to compensate the ICOs for transit Wireless toll traffic through the April 2003 settlements (i.e., February 2003 transit Wireless toll usage. Settlements for transit Wireless usage is two months in arrears). During that time, we will work with the ICOs to reach an acceptable on-going solution regarding this issue. In the interim, each ICO should be making good-faith efforts to finalize their own agreements with the Wireless carriers.

Because of this good faith extension, in the December 2002 settlement statements, your company received an adjustment that compensated you for terminating Wireless toll traffic that has been converted to Meet Point Billing (MPB). This covered settlements for both September and October usage. Since the BST transit Wireless toll usage settlement system cannot track the transit Wireless usage once it converts to MPB, we took a three month average of payments to each ICO for June through August 2002 transit Wireless toll settlements, and paid the difference between the three month average and the normal settlement amounts for September and October. We plan to continue this process for the adjustments up to and including January settlements. Beginning with February settlements, we anticipate having a process in place that will provide compensation based on the EMI 11-01-01 usage data.

If you have any questions, please call Val Sapp at 205/321-2800 or Marilee Calvert at 205/321-2122.

Sincerely,

Tim Watts

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 151

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Investigation of Duties and Obligations of)	ORDER CONCERNING
Telecommunications Carriers with Respect to the)	PETITION
Transport and Termination of CMRS Traffic)	

BY THE CHAIR: On February 25, 2003, the Alliance of North Carolina Independent Telephone Companies (Alliance), along with TDS Telecom and ALLTEL Carolina, Inc. (all collectively, the Coalition) filed a Petition asking the Commission to investigate and determine the respective rights, duties, and obligations of telecommunications carriers (including an appropriate intercarrier payment structure) with respect to the transport and termination of Commercial Mobile Radio Service (CMRS) traffic. Among other things, the coalition requested that the Commission set this matter for hearing but hold the hearing in abeyance pending the completion of a settlement process mediated by the Public Staff. The coalition also included a motion for Immediate Injunctive Relief to prevent BellSouth Telecommunications, Inc. (BellSouth) from unilaterally terminating, adjusting or amending the existing mechanism for payment of terminating access charges associated with CMRS traffic" delivered by BellSouth to various independent telephone companies (ICOs) pending resolution of the issues in this proceeding.

Specifically, the Coalition noted that the volume of CMRS traffic has increased substantially in recent years. CMRS carriers connect their facilities to the public switched network through contractual arrangements with wireline carriers. In many cases, the traffic originated by CMRS carriers is completed by ICOs. The traffic is not segregated and is indistinguishable from other traffic delivered to an ICO over ILEC facilities. Historically, the ILEC delivering this traffic to ICOs has provided compensation to the ICOs for terminating transport and access services. There is no contractual relationship between the originating CMRS provider and the terminating ICO.

Recently, several ILECs have indicated an intent to cease or reduce termination payments for ICOs. BellSouth has indicated that it intends to cease compensating ICOs for terminating access and transport services with respect to CMRS traffic as of the end of February 2003. The Coalition believes that this will force ICOs to either provide this service for CMRS traffic without compensation and therefore suffer substantial economic harm or take steps to identify and block this traffic with the Commission's consent.

Public Staff Filing

On February 27, 2003, the Public Staff filed a Notice of Intervention and Joinder in Motion for Injunctive Relief. The Public Staff also agreed to facilitate and participate in a collaborative process with all interested parties to investigate, discuss, and possibly resolve the issues raised in the Coalition's Petition.

BellSouth Response

On February 27, 2003, BellSouth filed a Response to the Motion for Immediate Injunctive Relief, requesting that the Commission deny the Coalition's Motion or, in the alternative, structure the relief granted to the Coalition so that BellSouth bills the CMRS providers on behalf of the ICOs while this matter is pending and join all CMRS providers as parties to this proceeding. BellSouth voiced no objection to the informal settlement procedure, assisted by the Public Staff, proposed by the Coalition.

BellSouth admitted that every telephone company in North Carolina has an obligation to interconnect, directly or indirectly, with every other telephone company to preserve the ubiquity of the network. BellSouth explained that, under the IntraLATA Toll Originating Responsibility Plan (ITORP), the carrier originating the toll traffic collects the appropriate revenue from the subscriber placing the call and, if the call terminates to a subscriber of another telephone company, the originating telephone company is obliged to pay the terminating telephone company for terminating the call. The charge is generally based on terminating intrastate access charges.

CMRS providers who terminate traffic to ICO subscribers have an obligation to pay for the termination of that traffic, just as they have an obligation to pay BellSouth for any transiting function. In the past, BellSouth has accepted CMRS traffic destined for ICO subscribers, has paid the ICO for termination, and has then billed the CMRS provider for both the transit and termination functions. This system has been necessary because, among other things, the CMRS traffic could not be identified as such.

However, BellSouth maintained that this is not a satisfactory arrangement for several reasons. First, CMRS traffic is defined as local traffic according to the Federal Communications Commission (FCC), and CMRS providers claim that all they owe the ICOs is reciprocal compensation for these calls, not terminating access charges. Second, because the calls received from CMRS providers are not sent over separate trunks and thus BellSouth must rely on estimates from the CMRS providers to determine a "factor" for calculation, BellSouth believes that it has been undercompensated for such traffic. As BellSouth has been moving to meet point billing (MPB) with CMRS providers, it is now possible to deliver call records to the ICOs to distinguish the traffic and enable the ICOs to bill the CMRS providers directly. Third, ICOs have been receiving access charge payments that they are not entitled to receive, resulting in unjust enrichment.

BellSouth stated that the ICOs have known of BellSouth's concerns for years. Because of lack of progress in removing itself as the "banker" for the ICOs, BellSouth has informed the ICOs that it would no longer perform the "banker" function for the ICOs with respect to traffic originated by CMRS providers with whom BellSouth has an MPB agreement. BellSouth knows of no legal obligation it is under to pay the ICOs for this traffic.

North Carolina Telephone Cooperative
Coalition, Inc. Filing

On February 28, 2003, the North Carolina Telephone Cooperative Coalition, Inc. (NCTCC) representing various Telephone Membership Corporations (TMCs) filed in support of the Petition of the Coalition and stated that the NCTCC shared the Coalition's concerns. The NCTCC also expressed concerns about actions similar to those of BellSouth undertaken by the ILECs in North Carolina operated by Sprint Corporation (Sprint). The NCTCC asked that Sprint be ordered to make back payments from the time compensation was reduced or eliminated and that Sprint immediately reinstate payment of terminating compensation pending resolution of outstanding issues. The NCTCC also requested that the NCTCC be included as a member of any industry task force named to seek resolution of this matter.

WHEREUPON, the Chair reaches the following

CONCLUSIONS

After careful consideration, the Chair concludes the following:

1. The Coalition's motion for immediate injunctive relief should be denied without prejudice, but BellSouth's alternative recommendation, that BellSouth bill the CMRS providers on behalf of the ICOs while this matter is pending, remitting to the ICOs the payment received from the CMRS providers, should be adopted. While the Chair is not without sympathy for the position of the ICOs or to the preservation of the status quo insofar as possible during the pendency of this proceeding, it does not appear that the Coalition has been able at this time to meet both prongs of the test for the issuance of the injunction – i.e., (1) the petitioner must be able to show the likelihood of success on the merits and (2) the petitioner is likely to sustain irreparable loss or injury unless the injunction is issued or the issuance is necessary for the protection of petitioner's rights during the course of litigation. Since this is the case, the alternative proposed by BellSouth appears to be at least a palliative solution and has the potential to afford the ICOs some relief during the pendency of this proceeding.

2. The Coalition's proposal that any hearing be held in abeyance pending completion of a settlement process involving the Public Staff should be accepted. All parties that have filed comments in this docket endorse this approach. Accordingly:

a. Utilizing the good offices of the Public Staff, as expeditiously as possible, all parties interested in the matter shall meet to discuss the issues related to appropriate compensation for CRMS traffic.

b. As soon as practicable after meeting, the parties shall advise the Commission of how long the settlement process should reasonably take so that the Commission can set an appropriate deadline.

c. At the conclusion of the settlement process, the parties shall advise the Commission of the extent of their agreement upon outstanding issues together with recommendations as to the timing and extent of further proceedings.

3. The Commission hereby formally initiates a proceeding in this docket to investigate the respective rights, duties, and obligations of telecommunications carriers involved in the transport and termination of CMRS traffic. At the appropriate time, this proceeding will be converted into an arbitration proceeding under Sections 251 and 252 of the Telecommunications Act of 1996, so that the rights, duties, and obligations of CMRS carriers relative to other telecommunications carriers can be fully adjudicated. If necessary, a hearing will be convened on an expeditious basis after the settlement process has been completed. The caption to this docket shall be as set out above.

4. Carolina Telephone and Telegraph Company (Carolina) and Central Telephone Company (Central) shall respond to the filing of the NCTCC not later than Friday, March 7, 2003. The NCTCC may file a response to the Carolina/Central filing by Friday, March 14, 2003.

5. The following shall be made parties to this proceeding: the Coalition, the Public Staff, all incumbent local exchange companies (ILECs), and the NCTCC. Petitions to intervene by other interested parties shall be filed by April 1, 2003. The Chief Clerk shall mail copies of this Order to all CMRS providers and all competing local providers (CLPs).

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of February, 2003.

NOI *Geneva S. Thigpen* ITIES COMMISSION

Geneva S. Thigpen, Chief Clerk

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